

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MICHAEL YOUNG,

Plaintiff,

v.

OPINION AND ORDER

12-cv-838-wmc

THE EAU CLAIRE WISCONSIN CITY  
HOUSING AUTHORITY, and KEITH  
A. JOHNSON,

Defendants.

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MICHAEL YOUNG,

Plaintiff,

v.

OPINION AND ORDER

12-cv-839-wmc

BROWN-JAGER LAW OFFICE, and  
SARAH E. BROWN-JAGER,

Defendants.

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MICHAEL YOUNG,

Plaintiff,

v.

OPINION AND ORDER

12-cv-840-wmc

THE EAU CLAIRE WISCONSIN CITY  
POLICE STATION, MATT STONE, and  
ART NELSON,

Defendants.

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MICHAEL YOUNG,

Plaintiff,

OPINION AND ORDER

v.

13-cv-078-wmc

JOSEPH SAURO,

Defendant.

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In a series of proposed civil actions consolidated solely for initial screening as reflected in the caption above, plaintiff Michael Young alleges that a variety of individuals and government entities violated a number of his constitutional rights by falsely arresting him for disorderly conduct and then relying on that false arrest to deny him a federal housing authority voucher.<sup>1</sup> The alleged underlying facts in support of each of these lawsuits are essentially the same. In each proposed lawsuit, plaintiff also asked for leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915, and the court concluded that plaintiff was unable to prepay the fee for filing this lawsuit. (No. 12-cv-838 (dkt. #4); No. 12-cv-839 (dkt. #4); No. 12-cv-840 (dkt. #4); No. 13-cv-78 (dkt. #3).)

The next step is determining whether any of plaintiff's proposed actions are (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). For the reasons that follow, the court will grant plaintiff leave to proceed

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<sup>1</sup> Young has actually filed five lawsuits. This consolidated screening order concerns the four that overlap factually. The court will address Young's proposed Eighth Amendment claim against Sheriff Ronald Cramer, No. 13-cv-77, by separate screening order.

only with respect to his Fourteenth Amendment due process claim against defendants the Eau Claire Wisconsin Housing Authority and Keith A. Johnathan in Case No. 12-cv-838. The court will deny plaintiff to proceed with respect to any other proposed causes of action in that case or Case Nos. 12-cv-839, 12-cv-840 and 13-cv-78.

### ALLEGATIONS OF FACT

In addressing any *pro se* litigant's complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this screening order, the court assumes the following, potentially material facts based on the allegations in Young's complaint.<sup>2</sup>

- On Saturday, September 15, 2012, Young was at the Eau Claire public library when he alleges that a small child, approximately 5- to 7-years-old, "walked up behind him and kicked him because he thought the complainant Michael [Y]oung was a Muslim." (Compl. (dkt. #1) p.1.)
- In response, Young alleges that he "kicked the little dude back very lightly not to hurt him [but] to stop him from kicking me." (*Id.*)
- The child's mother then called the Eau Claire police. Police Officers Matt Stone and Art Nelson arrived at the scene and arrested Young for creating a disturbance and for disorderly conduct.
- Plaintiff alleges that the police officers "had absolutely no reason to believe that [Young] violated an[y] criminal laws by stopping a kid from kicking him." (*Id.* at pp.1-2.) Plaintiff also alleges that the Eau Claire police department has a "history of making false arrests on people who they don't approve of." (*Id.* at p.2.)
- Young alleges that defendant Joseph Sauro, who Young identifies as an "Eau Claire Wisconsin court officer," swore under oath to false information in a criminal complaint. (13-cv-79 Compl. (dkt. #1) p.2.) Young contends that

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<sup>2</sup> All citations to a complaint are to the 12-cv-838 Complaint, unless otherwise noted, although as previously noted, the core allegations are the same across all four complaints.

these false allegations ruined Young’s “good reputation and good conduct.” (*Id.*)

- On October 15, 2012, Young alleges that defendant Keith D. Johnathan, the supervisor for the City of Eau Claire Housing Authority, deprived Young of a housing authority voucher based on his September 15, 2012, arrest for disorderly conduct.<sup>3</sup> Young alleges that he is now homeless.
- Plaintiff further alleges that the City of Eau Claire hired defendant Attorney Sarah E. Brown-Jager to draft a “corrupt decision” justifying Johnathan’s decision to deprive Young of his housing voucher. On October 15, 2012, Young alleges that Brown-Jager “wrongfully” accepted money payments from the City of Eau Claire Housing Authority to draft a letter to Young stating that Johnathan and the Housing Authority obeyed federal housing authority rules and law in terminating his housing authority voucher.

## OPINION

### **I. False Arrest Claim Against Defendants Eau Claire Police Station, Matt Stone and Art Nelson (No. 12-cv-840)**

Plaintiff alleges that defendants Eau Claire Police Department, Officer Matt Stone and Officer Art Nelson lacked probable cause to arrest him in violation of his rights under the Fourth Amendment. *See Mucha v. Vill. of Oak Brook*, 650 F.3d 1053, 1056 (7th Cir. 2011). The court considers the evidence from the “perspective of a reasonable person in the position of the officer.” *Mucha*, 650 F.3d at 1057 (citing *Gonzalez*, 578 F.3d at 537). “Probable cause exists if ‘at the time of the arrest, the facts and circumstances within the officer’s knowledge are sufficient to warrant a prudent person, or one of reasonable caution, [to believe] . . . that the suspect has committed, is

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<sup>3</sup> Young also seeks a federal investigation into whether Housing Supervisor Johnathan is selling federal housing authority vouchers and offering them in exchange for sex. As far as the court can tell, these allegations are not material to his proposed Fourth Amendment claim against the Eau Claire Housing Authority and Johnathan, and therefore the court has disregarded them in determining whether Young may move forward on his claim against Johnathan and the Eau Claire Housing Authority here.

committing, or is about to commit an offense.” *Mucha*, 650 F.3d at 1056 (quoting *Gonzalez v. City of Elgin*, 578 F.3d 526, 537 (7th Cir. 2009)). “Probable cause does *not* require that the existence of criminal activity is more likely true than not, rather (true to its label) probable cause simply requires ‘a probability or substantial chance of criminal activity exists.’” *Harney v. City of Chi.*, 702 F.3d 916, 922-23 (7th Cir. 2012) (emphasis added; quoting *Mucha*, 650 F.3d at 1056-57).

Young alleges that he was arrested for disorderly conduct and admits in his complaint that he kicked a child. While Young also contends that he did so “very lightly” and in self-defense, the concession that he did in fact kick a child still forecloses a finding of a lack of probable cause on the part of the arresting defendants. Wisconsin Statute § 947.01(1) provides:

Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor.

Considering Young’s admitted conduct, an officer had probable cause to believe Young engaged in disorderly conduct as that term is defined by the statute.<sup>4</sup> As such, Young has failed to state a claim against the arresting officers or the Eau Claire Police

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<sup>4</sup> While disorderly conduct is a misdemeanor offense, the United States Supreme Court has held that a law enforcement officer may make an arrest even for a misdemeanor punishable only by a fine. *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) (If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.”).

Department. The court will, therefore, deny Young leave to proceed on this claim and will dismiss Young's 12-cv-840 complaint.

## II. Defamation Claim against Joseph Sauro (No. 13-cv-79)

Related to his arrest, Young also brings a complaint against defendant Joseph Sauro, who Young identifies as an "Eau Claire Wisconsin court officer." (13-cv-79 Compl. (dkt. #1) p.2.) Young alleges that (1) Sauro swore under oath to false information contained in the criminal complaint, and (2) these false allegations ruined Young's "good reputation and good conduct." (*Id.*) The court construes this claim to be one for state law defamation.

What is not clear from the complaint is whether Sauro was a witness to Young's disorderly conduct or simply notarized an affidavit in that capacity. If Sauro notarized an affidavit as a court officer, then he is entitled to absolute immunity from this lawsuit. *See, e.g., Davenport v. Illinois*, 295 Fed. Appx. 810, 812, 2008 WL 4488893, at \*2 (7th Cir. Oct. 2, 2008) (unpublished) ("[J]udicial clerks enjoy absolute immunity when they take administrative acts at the direction of a judicial officer."); *Henry v. Farmer City State Bank*, 808 F.2d 1228, 1238 (7th Cir. 1986) (holding that court clerks are entitled to judicial immunity if their official duties have an integral relationship with the judicial process).

In any event, because plaintiff does not allege that Sauro violated his constitutional or federal statutory rights, Young cannot proceed in a lawsuit against Sauro under 42 U.S.C. § 1983. There is also no basis for finding subject matter

jurisdiction pursuant to this court's diversity jurisdiction, 28 U.S.C. § 1332. According, the court will deny Young leave to proceed in his claim against Sauro and will dismiss Young's No. 13-cv-79 complaint absent good cause shown.

### **III. Due Process Claim Against Defendants Eau Claire Housing Authority and Keith A. Johnathan (No.12-cv-838)**

Plaintiff separately alleges a violation of the due process clause of the Fourteenth Amendment of the United States Constitution by defendants Eau Claire Housing Authority and Keith A. Johnathan based on defendants' decision to "deprive" plaintiff of a housing voucher. Though it is not entirely clear from the complaint, it appears that Young had a Section 8 housing voucher that was revoked by defendants because of plaintiff's arrest for disorderly conduct.

Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437 *et seq.*, provides that a rent assistance program is to be run and regulated by the Department of Housing and Urban Development. *Chesir v. Hous. Auth. City of Milwaukee*, 801 F. Supp. 244, 246 (E.D. Wis. 1992). The Department contracts with state and local public housing authorities to make money available for the payment of rent on behalf of a specified number of low income individuals. *Id.*; 24 C.F.R. § 982.1(a). To participate in the program, one must apply to the public housing authority for admission. *Chesir*, 801 F. Supp. at 246. Those admitted receive "vouchers." *Id.* A voucher permits the holder to search for a suitable unit within the state and the rental payment is negotiated under the rent assistance program. *Id.*; 24 C.F.R. § 982.1(a). A voucher allows location

flexibility because it can be transferred to other states around the country. *Chesir*, 801 F. Supp. at 246; 24 C.F.R. Part 982, Subpart H.

Public housing authorities must comply with regulations promulgated by the Department of Housing and Urban Development. 24 C.F.R. § 982.52(a). The Department's regulations have the force of law and, if sufficiently specific and definite, they qualify as enforceable rights under § 1983. *Wright v. City of Roanoke Redevelopment & Hous. Auth.*, 479 U.S. 418, 431 (1987) (allowing tenants to use § 1983 to recover past overcharges violating rent-ceiling provision of Public Housing Act); *see also Price v. Pierce*, 823 F.2d 1114, 1122 (7th Cir. 1987) ("Section 1983 may be used as a vehicle for suing state housing officials, such as the head of [a state housing agency], for [the deprivation of] rights under federal housing law.").

Consistent with due process requirements defined in *Goldberg v. Kelly*, 397 U.S. 254 (1970), federal housing regulations require a public housing authority that is terminating a voucher recipient's rent assistance to provide the recipient with the following: (1) notice of the reason(s) for the decision, § 982.554(a); (2) an opportunity for informal review, § 982.554(b); (3) prompt written notice that the recipient may request an informal hearing §§ 982.555(a) and (c)(2); and (4) the opportunity to review relevant documents before the hearing and be present evidence at the hearing, §§ 982.555(e)(2) and (5). *See also Clark v. Alexander*, 85 F.3d 146, 150 (4th Cir. 1996) ("Federal regulations set out the basic procedural requirements of informal hearings in almost literal compliance with *Goldberg*.").

One can discern from the complaint that Young received some process -- Attorney Brown-Jager drafted a letter explaining the legal justification for revoking Young's Section 8 housing voucher. Still, Young may not have received a pre-revocation hearing and the other protections outlined above. As such, the court finds that Young has alleged sufficient facts from which an inference may be drawn that defendants Johnathan and the City of Eau Claire Housing Authority violated his rights under federal law. Young will, therefore, be allowed to proceed with his § 1983 claim against defendants Johnathan and the City of Eau Claire Housing Authority for the termination of his Section 8 voucher in violation of his due process rights. Of course, if in fact, it can be easily established that Young received the minimal due process outlined above, this claim may not survive a motion to dismiss or an early motion for summary judgment.

#### **IV. Due Process Claim against Attorney Sarah E. Brown-Jager (No. 12-cv-839)**

Plaintiff also appears to allege a due process violation claim against Attorney Sarah E. Brown-Jager and her law firm for writing a "corrupt decision" justifying Johnathan's decision to deprive Young of his housing voucher. As far as the court can tell from the pleading, it appears that Brown-Jager was hired by the Housing Authority to consider the lawfulness of Johnathan's decision to terminate Young from the program. However, an attorney cannot be held liable under Wisconsin law to an unrelated third party for acts committed within the scope of an attorney-client relationship, at least absent certain exceptions which do not apply here. *See, e.g., Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 321-22, 401 N.W.2d 816, 823 (1987). The policy behind attorney immunity to a

third party is well-grounded: imposing liability for impacts on others arising out of an attorney acting within the scope of a client relationship would unduly strain an attorney's undivided duty to his or her client. *See Auric v. Cont'l Cas. Co.*, 111 Wis. 2d 507, 513, 331 N.W.2d 325, 328 (1983).

Accordingly, the court will deny Young leave to proceed against Brown-Jager and her law firm and will dismiss Young's No. 12-cv-839 complaint.

#### **V. Motion for Assistance in Recruitment of Counsel**

In letters, Young has also asked the court to "appoint" him an attorney for his cases. (*See, e.g.*, No. 12-cv-838 dkt. ##3, 7.) Because litigants in civil cases do not have a constitutional right to a lawyer, and there are only a limited number of lawyers willing to volunteer their service at no charge, federal courts must exercise discretion in determining whether assistance in the recruitment of *pro bono* counsel is appropriate in a particular case. *Pruitt v. Mote*, 503 F.3d 647, 654, 656 (7th Cir. 2007). In determining whether to assist Young, the court must first find that (1) plaintiff has made reasonable efforts to find a lawyer on his own, but has been unsuccessful; or (2) plaintiff has been prevented from making such efforts. *Jackson v. Cnty. of McLean*, 953 F.2d 1070, 1073 (7th Cir. 1992). To prove that assistance in recruiting counsel is necessary, Young must, therefore, give the court the names and addresses of at least three lawyers who were contacted and declined to represent him in this case. Assuming he clears this hurdle, Young must also demonstrate his is one of those relatively few cases in which it appears

from the record that the legal and factual difficulty of the case exceeds the plaintiff's demonstrated ability to prosecute it. *Pruitt*, 503 F.3d at 655.

Young has failed to meet either prerequisite. To date, Young has provided nothing indicating that he has done anything to recruit his own counsel. Even if Young *had* attempted to retain counsel, he provides no basis in his motion to distinguish his request for counsel from other run-of-the-mill cases before this court. Any limitations in Young's knowledge of the law or caused by his indigency are virtually universal among *pro se* litigants, and are not by themselves an adequate basis for the relief sought. The court has already explained the law surrounding the due process claim for which Young has been granted leave to proceed and plaintiff has personal knowledge of the circumstances surrounding this claim. Accordingly, Young's motion to assist in retaining counsel will be denied. The denial, however, is without prejudice to plaintiff renewing his motion at a later stage of the proceedings after documenting his own attempts to recruit counsel.

#### ORDER

IT IS ORDERED that:

- 1) Plaintiff Michael Young is GRANTED leave to proceed on his claim that defendants The Eau Claire Wisconsin City Housing Authority and Keith A. Johnathan (No. 12-cv-838) violated his rights under the Fourteenth Amendment by denying him due process in revoking his Section 8 housing voucher.
- 2) Plaintiff is DENIED leave to proceed on his claim against Brown-Jager Law Office and Sarah E. Brown-Jager (No. 12-cv-839).

- 3) Plaintiff is DENIED leave to proceed on his claim against Eau Claire Wisconsin City Police Station, Matt Stone and Art Nelson (No. 12-cv-840).
- 4) Plaintiff is DENIED leave to proceed on his claim against Joseph Sauro (No. 13-cv-78).
- 5) Plaintiff's requests for assistance in recruiting counsel (No. 12-cv-838 (dkt. ##3, 7); No. 12-cv-839 (dkt. ##3, 6); No. 12-cv-840 (dkt. ##3, 7); No. 13-cv-78 (dkt. #5)) are DENIED.
- 6) The summons and complaint for No. 12-cv-838 are being delivered to the U.S. Marshal for service on defendants The Eau Claire Wisconsin City Housing Authority and Keith A. Johnathan.
- 7) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.
- 8) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered this 3rd day of October, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge